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**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of )  
)  
Joint Application by SBC Communications )  
Inc., Southwestern Bell Telephone Company, )  
and Southwestern Bell Communications )  
Services, Inc. d/b/a Southwestern Bell Long )  
Distance for Provision of In-Region, )  
InterLATA Services in Arkansas and Missouri )

CC Docket No. 01-194

**REPLY AFFIDAVIT OF THOMAS F. HUGHES**

STATE OF MISSOURI )  
)  
COUNTY OF COLE )

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I, Thomas F. Hughes, being of lawful age and duly sworn upon my oath, do hereby  
depose and state as follows:

1. My name is Thomas F. Hughes. My business address is 101 West High Street,

Jefferson City, Missouri 65101. I am the Vice President-Regulatory for Southwestern Bell Telephone Company ("SWBT") in Missouri. I am responsible for all Missouri regulatory operations for SWBT, including rate and tariff administration. I also have primary responsibility for interacting with the Missouri Public Service Commission ("MPSC") and its Staff ("Staff"). I am the same Thomas Hughes who filed an affidavit in this docket in support of SBC's application on August 20, 2001.<sup>1</sup>

### **PURPOSE OF AFFIDAVIT**

2. The purpose of my affidavit is to respond to comments made by several Competitive Local Exchange Carriers ("CLECs"), the Department of Justice and the Office of Public Counsel ("OPC") in this proceeding on September 10, 2001, and the Department of Justice on September 24, 2001. My affidavit primarily focuses on four areas: 1) the MPSC's Commitment; 2) Checklist Compliance; 3) SWBT's Compliance; and 4) the status of competition in Missouri.

### **MPSC'S COMMITMENT**

3. In their comments filed September 10, many of the CLECs criticize the review of SWBT's application. Comments of NuVox, Inc. at 12, CC Docket No. 01-194 (FCC filed Aug. 20, 2001) ("NuVox Comments"); Comments of McLeod USA at

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<sup>1</sup> Affidavit of Thomas Hughes attached to Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Arkansas and Missouri, CC Docket No. 01-194 (FCC filed Aug. 20, 2001) (App. A – MO, Tab 11).

6-7, CC Docket No. 01-194 (FCC filed Aug. 20, 2001) (“McLeod Comments”).

The facts, however, do not support the CLECs’ assertions.

4. The MPSC first demonstrated its commitment to thoroughly reviewing matters under the federal Telecommunications Act of 1996 (“the Act”) in Case No. TO-97-40 et. al., an arbitration proceeding between SWBT, AT&T and MCI. It is the MPSC’s decision in this case that is much maligned by the CLECs in their reply comments filed in this docket on September 10, 2001.
5. In Case No. TO-97-40, the MPSC followed the FCC’s TELRIC pricing rules but made significant adjustments to the inputs that resulted, in SWBT’s view, in certain rates that were below those mandated by the TELRIC methodology. While SWBT did not then, nor does it today, agree with the MSPC’s decision in Case No. TO-97-40, the concern was not over the method used by the MPSC in gathering the necessary evidence to reach its decision. Rather, SWBT took issue with the process of adopting the Staff’s proposed TELRIC rates before SWBT had the opportunity to express its position on Staff’s proposed adjustments.
6. Pursuant to the MPSC’s directive, Staff spent over four months working with the parties (SWBT, AT&T and MCI) to gather information on the cost inputs and cost models proposed by the parties. During this extensive review, Staff spent hundreds of hours with SWBT’s cost personnel analyzing SWBT’s cost models and inputs. Staff determined the appropriate model and inputs and ran SWBT’s models. During this same period, Staff met with AT&T and MCI cost personnel and conducted the same type of analysis and review concerning the AT&T and MCI “Hatfield model” that was conducted with SWBT’s TELRIC model.

Further, AT&T and MCI provided Staff with their positions concerning SWBT's TELRIC model and inputs.

7. Following this extensive undertaking, Staff issued a final report to the MPSC that is included as Attachment C to the, Final Arbitration Order in Case No. TO-97-40.<sup>2</sup> This exhaustive 189-page report details all of the findings of Staff, and includes Staff's recommendation on the various inputs.
8. In its Final Arbitration Order, the MPSC established permanent rates in Case No. TO-97-40. The MPSC noted:

The process of reviewing the costs, discounts and proposed rates was designed so that Southwestern Bell Telephone Company (SWBT), AT&T Communications of the Southwest, Inc. (AT&T) and MCI Telecommunications Corporation (MCI) could designate the appropriate subject matter expert (SME) or provide documentation in support of its position. As a result, the process led to a remarkable level of open communication and cooperation between SWBT, AT&T, MCI and the Arbitration Advisors. **The work which has resulted from this effort consumes several hundred pages and constitutes a thorough and exhaustive review of each and every cost factor** which the Commission finds relevant to this arbitration. (emphasis added). Id. at 3.

9. In establishing the interim rates in the second AT&T-SWBT Arbitration, Case No. TO-98-115, the MPSC applied the FCC's TELRIC rules as it had done in Case No. TO-97-40.<sup>3</sup> The MPSC established many of the rates (102 out of 136) in Case No. TO-98-115 at zero on an interim basis.<sup>4</sup>

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<sup>2</sup> Final Arbitration Order, AT&T Communication of the Southwest, Inc.'s Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection with Southwestern Bell Telephone Company, et al., Public Service Commission of Missouri, Case No. TO-97-40 et al. (July 31, 1997) ("Final Arbitration Order") (App. G – MO, Vol. 1, Tab 11).

<sup>3</sup> Report and Order, In the Matter of AT&T Communications of the Southwest, Inc.'s Petition for Second Compulsory Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Southwestern Bell Telephone Company, Case No. TO-98-115 (Dec. 23, 1997) ("Second Arbitration Order") (App. G – MO, Vol. 1, Tab 20).

<sup>4</sup> Ironically, some CLECs complain about high interim rates. As discussed *infra*, this patently untenable position is directly contradicted by the MPSC's decision to set 102 interim rates at zero.

10. The parties' criticism of the MPSC's commitment to setting permanent rates is shallow. As the MPSC has demonstrated in Case No. TO-97-40, it is committed to reviewing inputs and setting rates via an application of TELRIC principles. As the Commission found in its March 15, 2001 Order, "the Commission concludes that SWBT provides nondiscriminatory access to UNEs at any technically feasible point under just and reasonable rates, terms, and conditions, and **at cost-based rates, as required by the Act.** See 47 U.S.C. §§ 251(c)(3), 252(d)(1)."<sup>5</sup> (emphasis added)
11. The MPSC's review of SWBT's 271 application is a testimonial to the MPSC's commitment to implementation of the Act and the FCC interpretive rules. Over the nearly two and one-half year process, the MPSC reviewed and resolved numerous issues in ultimately recommending approval of SWBT's 271 application.
12. During the over two year review process employed by the MPSC, it conducted: (a) a lengthy 10-day hearing following "contested case" procedures, and (b) a series of hearings akin to a collaborative process in which CLECs were given the opportunity to raise, and SWBT subject matter experts were required to respond, to any issues identified by CLECs. In addition, the parties submitted and the MPSC reviewed thousands of pages of affidavits and briefs. Further, there was an independent third party evaluation of performance data and OSSs issues by Ernst

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<sup>5</sup> Order Regarding Recommendation on 271 Application Pursuant to the Telecommunications Act of 1996 and Approving the Missouri Interconnection Agreement (M2A) at 70, Application of Southwestern Bell Telephone Company to Provide Notice of Intent to File an Application for Authorization to Provide In-region InterLATA Services Originating in Missouri Pursuant to Section 271 of the Telecommunications Act of 1996, Public Service Commission of Missouri, Case No. TO-99-227 (Mar. 15, 2001) ("March 15, 2001 Order") (App. C – MO, Vol. 19, Tab 98).

- & Young (“E&Y”). The thorough and complete evaluation conducted by the MPSC included consideration of proceedings conducted by the Texas Public Utilities Commission (“TPUC”), the Kansas Corporation Commission (“KCC”) and the Oklahoma Corporation Commission (“OCC”).
13. Following this lengthy process, the MPSC issued on March 6, 2001, its Order Finding Compliance.<sup>6</sup> In this order, the MPSC noted that it “gave each CLEC that chose to participate every opportunity to raise any issue in response to SWBT’s request for authority to provide interLATA long-distance services in Missouri”. Order Finding Compliance at 3.
14. The MPSC’s decision was “based on the extensive record in this case,” which ultimately resulted in the MPSC’s March 15, 2001 Order. March 15, 2001 Order at 91. In this Order, the Commission recommended that “the FCC grant SWBT’s Application for authorization to provide in-region, interLATA services in the state of Missouri.” Id.
15. Following SWBT’s voluntary withdrawal of its 271 application at the FCC, some parties criticize the MPSC for not re-opening the docket at the state level. This criticism is unfounded. The MPSC continued to allow filings in Case No. TO-99-227, even after it had issued an Order on April 2 closing the case. Based upon the filings of the parties and the MPSC’s commitment to continue monitoring SWBT’s compliance with the Missouri 271 Agreement (“M2A”), the MPSC sought information from SWBT concerning any changes it would be making to its

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<sup>6</sup> Order Finding Compliance with the Requirements of Section 271 of the Telecommunications Act of 1996 at 3, Application of Southwestern Bell Telephone Company to Provide Notice of Intent to File an Application for Authorization to Provide In-region InterLATA Services Originating in Missouri Pursuant to Section 271 of the Telecommunications Act of 1996, Public Service Commission of Missouri, Case No. TO-99-227 (Mar. 6, 2001) (“Order Finding Compliance”) (App. C – MO, Vol. 19, Tab 96).

271 application. On August 6, 2001, the MPSC directed SWBT to provide the MPSC with an on-the-record presentation on August 16, 2001. During this presentation, SWBT provided the MPSC with information about the present application. This information included details regarding SWBT's voluntary price reductions in the M2A, updated performance data, the current status of competition, SWBT's compliance with the ASCENT decision, and the LMOS database improvements.

16. Following the August 16, 2001 presentation, and after considering all of the comments filed by the parties since March 15, 2001, the MPSC issued its September 4, 2001 Order.<sup>7</sup> In this order, the Commission found "no new information sufficient to reconsider its previous recommendation. The Commission continues to support Southwestern Bell's application for in region interLATA authority." September 4, 2001 Order at 9.
17. The MPSC established four dockets to finalize all remaining interim rates and terms and conditions associated with the M2A. This is not an unusual process for a state Commission. The Commissions in Texas, Kansas and Oklahoma all had established interim rates or interim terms and conditions at the time those Commissions recommended approval of SWBT's 271 applications in those states.
18. The MPSC repeatedly has expressed its commitment to expeditiously establish the rates, terms and conditions for those services that are interim in the M2A.

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<sup>7</sup> Order Denying Motions to Reconsider Recommendation and Opening Case of Monitoring Purposes, Application of Southwestern Bell Telephone Company to Provide Notice of Intent to File an Application for Authorization to Provide In-region InterLATA Services Originating in Missouri Pursuant to Section 271 of the Telecommunications Act of 1996, Public Service Commission of Missouri, Case No. TO-99-227 (Sept. 4, 2001) ("September 4, 2001 Order").



Most recently, the MPSC stated in its September 4, 2001 Order “that the Commission is working diligently to determine the appropriate long-term rates, subject to true-up, where those rates had not previously been set.” Id.

19. For the rates the MPSC established as interim in the M2A, it established four dockets to establish permanent rates. For the interim collocation rates, the MPSC established Case No. TT-2001-298 In the Matter of Southwestern Bell Telephone Company’s Proposed Tariff PSC Mo. No. 42 Local Access Service Tariff, Regarding Physical and Virtual Collocation. Other unbundled network element rates will be established as permanent in Case No. TO-2001-438 In the Matter of the Determination of Prices, Terms, and Conditions of Certain Unbundled Network Elements. The MPSC set interim rates for loop conditioning and line sharing/line splitting rates at zero in the M2A and established Case Nos. To-2001-439 In the Matter of the Determination of Prices, Terms and Conditions of Conditioning for xDSL-capable Loops and TO-2001-440 In the Matter of Determination of Prices, Terms and Conditions of Line-Splitting and Line-Sharing to determine permanent rates for these elements.
20. One of these cases is now resolved. SWBT reached agreement with various CLECs on the rates, terms and conditions of a collocation tariff. On August 24, 2001, the parties to Case No. TT-2001-298 filed a Unanimous Stipulation. Toward this end, on September 6, 2001, the MPSC issued an order approving the Unanimous Stipulation in Case No. TT-2001-298.<sup>8</sup> In compliance with the

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<sup>8</sup> Order Approving Second Stipulation and Agreement and Suspending Procedural Schedule, In the Matter of Southwestern Bell Telephone Company’s Proposed Tariff PSC Mo. No. 42 (Local Access Service Tariff) Regarding Physical and Virtual Collocation, Missouri Public Service Commission, Case No. TT-2001-298 (Sept. 6, 2001).

MPSC's order, SWBT filed conforming tariffs with a proposed effective date of October 12, 2001. On October 3, 2001, the MPSC issued an order approving the collocation tariffs submitted by SWBT.

21. The Commission has already conducted initial evidentiary hearings in Case Nos. TO-2001-439 and TO-2001-440, two of the three remaining dockets to establish permanent rates (and some terms and conditions), for the M2A. Initial testimony has been filed in the last remaining proceeding, Case No. TO-2001-438,<sup>9</sup> and hearings are scheduled for December 3-7, 2001.<sup>10</sup>
22. The MPSC, in establishing the procedural schedules for these four cases, chose to follow the substantially same procedural schedule requested by the CLECs. SWBT had sought even more expeditious schedules in these cases, since most of the interim rates have been set at zero, and the M2A contains only a limited six-month true-up provision once permanent rates are established. Therefore, the CLECs that criticize the MPSC and claim the MPSC will not establish permanent rates "any time soon," are being disingenuous.
23. The loop conditioning charges contained in the M2A have been set at \$0.00 on an interim, subject to true-up basis pending the MPSC's determination of permanent rates in Case No TO-2001-439. Yet, the parties (see Comments of AT&T Corp., CC Docket No. 01-194 (FCC filed Aug. 20, 2001) ("AT&T Comments"); Declaration of Baranowski at 27 attached to AT&T Comments) are also critical of SWBT's non-recurring loop conditioning charges. Since SWBT incurs costs

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<sup>9</sup> Permanent prices for the UNE's NuVox asserts are not based on TELRIC methodology (e.g., DS3 and DS1 entrance facilities, multiplexing, digital cross connect systems and SS7 cross connect ) are to be determined by the MPSC in Case No. TO-2001-438. See NuVox Comments at 4-5.

<sup>10</sup> The hearings scheduled for December 3-7, 2001 will include the pricing phase of Case No. TO-2001-440.

whenever loop conditioning is performed, it is appropriate for SWBT to recover its costs associated with conditioning of the loop. AT&T has raised the same points in the docket pending before the MPSC and the MPSC will resolve these issues raised by AT&T in that proceeding.

#### **CHECKLIST COMPLIANCE**

24. Despite the claims of several CLECs (e.g., AT&T, WorldCom, Sprint), SWBT is in full compliance with the 14 point checklist defined in the Act. The MPSC provided a detailed analysis in its March 15, 2001 Order of SWBT's compliance with each checklist item.
25. Additionally, El Paso Networks, LLC and Pacwest Telecom, Inc., neither of which participated in Missouri Case No. TO-99-227, claim that SBC is requesting that this Commission rely on promises of future performance in determining checklist compliance. In fact, SWBT and no less than 22 CLECs, including El Paso Networks, have been operating under the M2A interconnection agreement, an agreement the MPSC found to be checklist compliant and which was approved on March 15, 2001. The El Paso Networks/SWBT agreement has been in effect since March 21, 2001.
26. The MPSC affirmed this compliance in its comments filed on September 10, 2001. In these comments, the MPSC again provided a checklist item-by-checklist item review demonstrating SWBT's compliance.
27. The MPSC's comments also confirm that SWBT has complied with the pricing requirements of the Act. Several parties (e.g., AT&T Comments at 9; Comments

of WorldCom Inc. at 27-28, CC Docket No. 01-194 (FCC filed Aug. 20, 2001) (“WorldCom Comments”)) expressed their views in their September 10, 2001 comments about SWBT’s compliance with checklist item 2, but the MPSC correctly found SWBT to be in compliance. See also Reply Affidavits of Ms. Barbara Smith, Mr. Thomas Makarewicz, and Dr. Dale Lehman, filed concurrently herewith.

28. In its March 15, 2001 Order, the PSC stated “SWBT’s cost studies in Case No. TO-97-40 have been determined by this Commission to fully comply with TELRIC.” March 15, 2001 Order at 32.
29. Parties claim the M2A should contain rates from other states (e.g., NuVox Comments at 16, WorldCom Comments at 20). These same demands were made during the exhaustive Section 271 review performed by the MSPC. The MSPC considered all of the evidence during Case NO. TO-99-227 and determined in its March 15, 2001 Order, “The rates for UNEs in Missouri set in Case No. TO-97-40 are appropriately based on Missouri costs, and the Commission finds the proposal to utilize Texas rates in lieu of Commission-approved TELRIC rates in Missouri to be unreasonable. Prices for most of the network elements that are actually used in volumes by CLECs were established by the Commission in the AT&T arbitrations (Case Nos. TO-97-40, et al. and TO-98-115)”. March 15, 2001 Order at 74.
30. Several parties claim that there are too many interim rates in the M2A. (e.g., McLeod Comments at 6; Comments of El Paso Networks, LLC. And PacWest Telecom at 14, CC Docket No. 01-194 (FCC filed Aug. 20, 2001) (“EI

Paso/PacWest Comments”), Comments of Sprint Communications Company L.P. at 26, CC Docket No. 01-194 (FCC filed Aug. 20, 2001) (“Sprint Comments”). First, as noted by the MPSC, the UNEs which are used in large volume are not interim. March 15, 2001 Order at 74. Second, many of the interim rates are set at zero, and the M2A permits only a six-month true-up upon establishment of permanent rates. For example, the 102 of the 136 interim rates from Case No. TO-98-115 are set at zero.<sup>11</sup> These zero priced interim rates are in addition to the zero-based interim rates for line sharing and loop conditioning that are contained in the M2A. The interim collocation rates were set at Texas levels, which are insufficient to cover SWBT’s costs, but, in any event, the recently approved stipulation will result in permanent rates. Clearly the CLECs have benefited from these interim rates, and it is SWBT that must bear the financial risk.

31. Sprint, on page 22 of its comments, discusses the FCC’s previous orders in which the applicant sought 271 approval under a proposed agreement which contained interim rates. In particular, Sprint cites a three-prong test: 1) The rates must be reasonable under the circumstances; 2) The state commission has demonstrated its commitment to the FCC’s pricing rules; and 3) A provision is made for refund or true-up once permanent rates are set.
32. The rates contained in the M2A meet this test. 1) The rates contained in the approved M2A are clearly reasonable. Certain rates from Case No. TO-97-40 were found by the MPSC to be TELRIC compliant. The rates the MPSC ordered as interim, including loop conditioning and collocation, were the very rates the CLECs requested the MPSC make interim in the M2A. Further, as noted earlier,

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<sup>11</sup> See Second Arbitration Order.

many of these rates are also beneficial to the CLECs since they are set at zero. 2) As I noted in my initial affidavit, many of the CLECs criticizing the MPSC in this proceeding have agreed the MPSC established TELRIC based rates in Case No. TO-97-40.<sup>12</sup> In addition, the United States Court of Appeals for the Eighth Circuit found that the MPSC followed the FCC's TELRIC principles.<sup>13</sup> (See Decision of the 8<sup>th</sup> Circuit at page 4). 3) It was the CLECs who, during the MPSC's review of SWBT's 271 application, endorsed the MPSC's proposal (over SWBT's objection) to limit the time frame for true up when the MPSC's approved interim rates in the M2A. This is no surprise since many of the interim rates contained in the M2A approved by the MPSC are set at zero. The M2A contains a limited six-month retroactive true up provision for all interim rates, such that a MPSC final order establishing permanent rates will be applied retroactively only for the six months immediately preceding the order.

33. The parties are further critical that there has been no finding that the interim rates the MPSC adopted from Texas in the M2A are TELRIC compliant. (e.g., AT&T Comments at 38). This is false. The MPSC in its March 15, 2001 Order stated: "The Commission further concludes that the interim rates in the M2A based on Texas rates, are also TELRIC-compliant." March 15, 2001 Order at 75.
34. The parties are also critical of the voluntary reductions that SWBT made to certain rates established by the MPSC as TELRIC compliant. The MPSC has

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<sup>12</sup> Brief For Defendant-Appellee AT&T Communications of the Southwest, Inc. at 48, Southwestern Bell Telephone Company, v. Missouri Public Service Commission, et al., 236 F.3d 922; 2001 U.S. App. LEXIS 156, Nos. 99-3833 & 99-3908, United States Court Of Appeals For The Eighth Circuit (Feb., 2000, filed).

<sup>13</sup> Opinion at 4, Southwestern Bell Telephone Company, v. Missouri Public Service Commission, et al., 236 F.3d 922; 2001 U.S. App. LEXIS 156, Nos. 99-3833 & 99-3908, United States Court Of Appeals For The Eighth Circuit (Jan. 8, 2001, filed).

considered the intervenors' claims. Before issuing its August 30, 2001 Order, the MPSC reviewed the comments of all the parties.<sup>14</sup> In its Order, the MPSC ordered that "the amendments proposed to the Appendix Pricing UNE Schedule of Prices, Attachment 12: Compensation, and Attachment 25: xDSL, attached as Exhibits A, B, and C to the Motion of Southwestern Bell Telephone Company for Approval of Revised Missouri 271 Interconnection Agreement Rates filed on August 16, 2001, are found to meet the requirements of 47 U.S.C. Section 271(c)." August 30, 2001 Order at 4. The MPSC further stated in its September 4, 2001 Order, "[t]he fact still remains that this Commission has determined TO 97-40 prices to be TELRIC compliant, and lowering those rates cannot logically be considered discriminatory to the competitive companies." September 4, 2001 Order at 8.

35. In an effort to put to rest any lingering CLEC complaints about SWBT's cost-based, UNE prices, SWBT has made significant voluntary reductions to many of its prices. SWBT's reductions were targeted toward alleviating two recurring CLEC complaints (which are unjustified): 1) Missouri's UNE-P rate is high (See El Paso/PacWest Comments at 15); and 2) prices in Missouri's rural areas, driven by higher costs, result in competition that is not as robust as competition in Missouri's urban zone. (See Declaration of Lieberman at 9 attached to AT&T Comments). Although SWBT is under no legal obligation to reduce its MPSC-sanctioned, cost-based rates, SWBT nevertheless, has substantially reduced the

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<sup>14</sup> Order Granting Motion to Accept Revised Missouri Interconnection Rates, Application of Southwestern Bell Telephone Company to Provide Notice of Intent to File an Application for Authorization to Provide In-region InterLATA Services Originating in Missouri Pursuant to Section 271 of the Telecommunications Act of 1996, Public Service Commission of Missouri, Case No. TO-99-227 (Aug. 30, 2001) ("August 30, 2001 Order").

price of certain key elements, particularly those comprising the UNE-P – e.g., 10% reductions in loops and 18.5% reductions in switching elements. Moreover, SWBT has emphasized its reductions in rural areas where CLECs allege that competition is not nearly as robust as competition in Missouri's other zones. These substantial reductions to the permanent prices established by the MPSC, via an application of TELRIC, should only encourage even more competition in the Missouri market.

36. The MPSC has found SWBT's rates in the M2A to be compliant with the Act. As the FCC is aware and as McLeod points out, the FCC may "rely heavily on the rate making decisions made by the applicable state commissions." (McLeod Comments at 7). The MPSC has fully addressed all of the concerns raised by the CLECs and OPC regarding pricing in the M2A.
37. For all of the foregoing reasons, as well as those outlined in the reply affidavits of Ms. Barbara Smith, Mr. Thomas Makarewicz, and Dr. Dale Lehman, the FCC should approve the rates approved by the MPSC in the M2A.

#### **SWBT'S CONTINUED COMPLIANCE**

38. In addition, certain parties (e.g., NuVox Comments at 2, McLeod Comments at 5) comment that SWBT's application is based upon "future promises." These assertions are false. As the MSPC has confirmed and SWBT has established in great detail, SWBT fully meets the checklist requirements. It is a fact, not a promise, that SWBT is delivering good service to the CLECs.
39. The Staff, in its Staff Suggestions filed on August 28, 2001, provided the MPSC



with its analysis of SWBT's performance.<sup>15</sup> "Southwestern Bell's overall performance measurement results have steadily improved. Focusing on measures with a statistically valid z-score and sample size of at least 10, Southwestern Bell successfully met 92% of the Version 1.7 performance measures during the month of July 2001." Staff Suggestions at 2.

40. The Staff continued its evaluation by stating, "Of particular note is since the approval of the Missouri 271 Agreement on March 15, 2001, several complete months of performance measurement results under the Missouri 271 Agreement have been compiled. The performance results for May, June and July present the highest success ratios compiled by Southwestern Bell to date." Id.
41. The MPSC agreed with its Staff. In its September 6, 2001 Order, the MPSC stated "The Commission recognizes ... the improved performance of Southwestern Bell since the competitive companies have been operating under the M2As in Missouri." September 6, 2001 Order at 9.
42. OPC, McLeod, and AT&T attempt to use a Missouri docket,<sup>16</sup> in which the MPSC determined the terms and conditions governing CLEC participation in a MPSC-mandated expanded local calling plan called MCA service, to suggest that SWBT was somehow engaged in anti-competitive conduct and, therefore, SBC's application should be denied. However, their allegations regarding SWBT's actions are misleading and erroneous. While I will not attempt to recreate the

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<sup>15</sup> Staff's Suggestions to the Commission, Application of Southwestern Bell Telephone Company to Provide Notice of Intent to File an Application for Authorization to Provide In-region InterLATA Services Originating in Missouri Pursuant to Section 271 of the Telecommunications Act of 1996, Public Service Commission of Missouri, Case No. TO-99-227 (Aug. 28, 2001) ("Staff Suggestions").

<sup>16</sup> In the Matter of an Investigation for the Purpose of Clarifying and Determining Certain Aspects Surrounding the Provisioning of Metropolitan Calling Area Service After the Passage and Implementation of the Telecommunications Act of 1996, Missouri Public Service Commission, Case No. TO-99-483.

record in that case, I must clear up several of their inaccurate assertions.

43. The case referenced by OPC, McLeod and AT&T examined how CLECs were going to participate in the MCA plan. In fact, the case was captioned, In the Matter of an Investigation for the Purpose of Clarifying and Determining Certain Aspects Surrounding the Provisioning of Metropolitan Calling Area Service After the Passage and Implementation of the Telecommunications Act of 1996. See supra n. 19. This was a case to determine, among other issues, the terms and conditions by which CLECs were to participate in the MCA plan.
44. The MCA plan was initially created by the MPSC in a case that predated the passage of the Act.<sup>17</sup> The MCA plan was implemented in 1993. The MCA plan provided for expanded local calling in St. Louis, Kansas City and Springfield, which are Missouri's most populous areas. The MCA plan, as ordered by the MPSC, had a prescribed calling scope, prescribed pricing levels (that were consistent among the Incumbent Local Exchange Carriers ("ILECs") required to provide the service), a prescribed bill-and-keep arrangement in lieu of any intercompany compensation, and a prescribed use of specially identified NPA-NXXs that permitted MCA calls to be locally dialed. Thus, the MCA plan had a set of MPSC-prescribed rules or terms and conditions that the ILECs who were ordered to provide it had to abide by.
45. McLeod and AT&T's use of the term "screening" or "screen" is an attempt by McLeod and AT&T to suggest that SWBT was doing something inappropriate

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<sup>17</sup> In the Matter of the Establishment of a Plan for Expanded Calling Scopes in Metropolitan and Outstate Exchanges, Missouri Public Service Commission, Case No. TO-92-306.

with its switch translations.<sup>18</sup> These allegations simply are not true. SWBT, like other LECs, programs its switches to recognize calls as either local or toll. When a SWBT MCA subscriber makes a call within the MCA area, the switch must be programmed to determine whether or not the call should be locally dialed.

Depending on where the MCA subscriber is calling, it may be either a local or toll call for the MCA subscriber to call another customer. If the MCA subscriber is calling another party who does not subscribe to the MCA service (the end user may be outside the local calling scope of the MCA subscriber), it must be dialed as a toll call. Because the MPSC had not yet determined the terms of CLEC participation in the MCA plan, (e.g., prescribed calling scope, prescribed bill-and-keep arrangement, and dedicated NPA-NXX codes), CLEC customers were not MCA subscribers. Therefore, certain calls to CLEC customers, just like certain calls to SWBT's and the other LEC's non-MCA subscribers, were outside the local calling scope of the MCA subscriber. In other words, SWBT treated CLEC customers in the same manner as they treated calls to their own and each other's non-MCA subscribers.

46. To address the issue, the MPSC initiated a case to resolve the terms and conditions of MCA participation. Following full hearings, the MPSC issued an order which determined that CLECs should be permitted to be MCA providers. At that time, SWBT, and the other ILECs who were required to provide MCA service, expeditiously changed their switch translations to include those customers designated by CLECs like McLeod and AT&T as "MCA subscribers" in the local calling scopes of other MCA subscribers. Since the MPSC's order in that

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<sup>18</sup> McLeod Comments at 15, AT&T Comments at 102.

proceeding, SWBT is aware of no CLEC complaints with respect to SWBT's MCA subscribers being able to locally call other CLECs' MCA subscribers.

47. McLeod attempted to raise many of these same issues during the MPSC's review of SWBT's Section 271 application. During the hearing on October 11, 2000, Commissioner Murray responded to McLeod's inaccurate claims. She stated, "As far as MCA in that we did have a proceeding on that and this Commission made a determination and there was no finding that there was any improper activity on the part of Southwestern Bell."<sup>19</sup>
48. The MPSC also addressed this matter in its September 7, 2000 MCA Order.<sup>20</sup> At page 18 of that Order, the MPSC stated that "This case was established to determine the status of the MCA service from this point forward and therefore any damages sustained by what the CLECs allege was illegal action by the ILECs is more properly raised in a complaint case." Since the issuance of that order, no CLEC has filed a complaint against SWBT claiming illegal action or seeking damages. Subsequent to the issuance of the order, AT&T voluntarily withdrew its complaint (see AT&T Comments at 103) that had been filed prior to the issuance of the MPSC's MCA order.
49. The comments of McLeodUSA assert that "SBC unilaterally, and without notice to McLeodUSA or its IDSL customers, disconnected all of McLeod's customers on July 18, 2001. SBC also began rejecting any new orders that McLeodUSA

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<sup>19</sup>Missouri Public Service Commission, Transcript of Proceedings, Hearing of October 11, 2001 at 2282 (App. C – MO, Vol. 13, Tab 63).

<sup>20</sup> Report and Order at 18, Investigation for the Purpose of Clarifying and Determining Certain Aspects Surrounding the Provisioning of Metropolitan Calling Area Service After the Passage and Implementation of the Telecommunications Act of 1996, Public Service Commission of Missouri, Case No. TO-99-483 (Sept. 7, 2001) (App. G – MO, Vol. 7, Tab 74).

placed for IDSL service at or about this time.” (See McLeod Comments at 17).

In response to this allegation it is important to describe, chronologically, the process that McLeod took to obtain permission from the MPSC to provide IDSL service under its existing interconnection agreement with SWBT.

50. The parties reached agreement on a DSL amendment to the interconnection agreement, and McLeod sent the DSL amendment for Commission approval with a letter dated May 23, 2001.
51. Although McLeod states in its September 10, 2001 comments that “the amendment indicates that it would be effective upon signature,” it fails to include contacts it had with the MPSC indicating that McLeod knew that the MPSC did not consider the amendment to be effective upon signature. Id. In a letter dated June 29, 2001, from McLeod to the MPSC, McLeod states, “In response to the Commission’s request, the purpose of this letter is to clarify that it is not the intent of the Parties to question the authority of the Commission or to circumvent the FTA Section 252(e) approval process. The Parties recognize the Commission’s authority to approve or reject the Modification and agree that it will not be effective until approved by this Commission.” (See Attachment A to my Reply Affidavit).
52. Subsequently, in a letter dated July 23, 2001, the MPSC notified McLeod that the amendment “was being made effective.” (See Attachment B to my Reply Affidavit).
53. As explained in more detail in the joint reply affidavit of Mr. Michael Flynn, Ms. Beth Lawson, and Mr. Brian Noland, SWBT disconnected service only as result

of SWBT's realization that McLeod had not obtained approval of its interconnection agreement amendment from the MPSC to acquire the UNEs used to provide IDSL service.

54. AT&T attempts to raise yet again the issue of Winbacks. This is the very same issue that it raised before the MPSC during Case No. TO-99-227. As was the case then, AT&T has not provided any credible evidence to support its claims. While the MPSC permitted AT&T to raise its baseless claims on several occasions, it did not make a finding on this matter, as AT&T provided no support for its allegation.
55. SWBT follows the MPSC's procedures set out at 4 CSR 240-33.150(5)(E) for lifting preferred carrier freezes.<sup>21</sup> As acknowledged by AT&T's witness, SWBT accepts 3-way calls with the customer and the submitting carrier on the line to lift or remove the preferred carrier freeze so that any concerns they had about the process for lifting freezes have been addressed.<sup>22</sup> When a preferred carrier freeze is lifted through a 3-way conference call, SWBT first verifies the identity of the customer by requesting secure information from the customer (e.g., a secret

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<sup>21</sup> 4 CSR 240-33.150(5)(E) states that:

All local exchange carriers who offer preferred carriers freezes must, at a minimum, offer subscribers the following procedures for lifting a preferred carrier freeze:

1. A local exchange carrier administering a preferred carrier freeze must accept a subscribers written and signed authorization stating her or his intent to lift a preferred carrier freeze; and
2. A local exchange carrier administering a preferred carrier freeze must accept a subscriber's oral authorization stating her or his intent to lift a preferred carrier freeze and must offer a mechanism that allows a submitting carrier to conduct a three (3)-way conference call with the carrier administering the freeze and the subscriber in order to lift a freeze. When engaged in oral authorization to lift a preferred carrier freeze, the carrier administering the freeze shall confirm the appropriate verification data (e.g., a subscriber's date of birth) and the subscriber's intent to lift the particular freeze.

<sup>22</sup> See Missouri Public Service Commission, Transcript of Proceedings, Hearing of October 11, 2001, AT&T's T. Kohly at 2423 (App. C – MO, Vol. 13, Tab 63) .

password, social security number). To the extent a subscriber may not recall whether there is a freeze on any of his or her services or is uncertain with the terminology, this three-way call procedure is available for the submitting carrier to confirm the presence of a freeze, as the FCC recently noted.<sup>23</sup>

### **STATUS OF COMPETITION IN MISSOURI**

56. As outlined in the reply affidavit of Mr. David Tebeau, the level of CLEC market share in Missouri is conservatively estimated at between 10.5% and 15.4% as of the end of August 2001. The 10.5% details the minimum level of lines served by the CLECs in Missouri. This summary total includes resold lines, UNE-Ps (loop/port combos) and E-911 listings reported to SWBT by the CLEC. Further, the MPSC in its order recommending approval of SWBT's entry into the Missouri long distance market found, based on its Staff's solicitation of information from Missouri CLECs in August of 2000 (over one year ago), that 12% of access lines in SWBT's Missouri territory were served by CLECs.<sup>24</sup> These facts demonstrate that the Missouri Office of Public Counsel's claim that the CLEC market share in Missouri is at best 5% is plainly unfounded. (Comments of the Missouri Office of the Public Counsel at 8, CC Docket No. 01-194 (FCC filed Aug. 20, 2001)). In fact, OPC revised its testimony to reflect a minimum 10% CLEC market share in a Missouri proceeding, Case No. TO-2001-467, citing a mathematical error.<sup>25</sup>

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<sup>23</sup> Third Report and Order and Second Order on Reconsideration, Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; and Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers, 15 FCC Rcd 15996, 16031-16032, ¶ 76 (2000).

<sup>24</sup> March 15, 2001 Order at 20.

<sup>25</sup> In the Matter of the Investigation of the State of Competition in the Exchanges of Southwestern Bell Telephone Company, Case No. TO-2001-467.

57. The CLECs erroneously claim that they are not able to compete in Missouri via the purchase of unbundled network elements. As outlined in the reply affidavit of Dr. Dale Lehman, this is simply not the case. If there is any limitation to competition in Missouri, it is solely attributable to the CLEC's own business plans. CLECs have found the lucrative business market in Missouri to be open to competition. Many are choosing to focus only on those customers who can bring the highest margins to their business. CLECs are free to determine what markets they wish to serve and what markets they do not wish to serve. This allows the CLECs to "cherry pick" the best customers in the market.
58. As I noted in my initial affidavit, the UNE-P rates in Missouri are comparable to the rates approved by the Commission in the O2A. The Missouri rates are lower than the UNE-P rates approved by the Commission in New York and Massachusetts. In addition, as Dr. Dale Lehman also notes in his reply affidavit, the UNE-P rates in Missouri allow CLECs to compete in the residential local market.
59. CLECs interested in competing in the marketplace, rather than attempting to constrain SWBT in the regulatory arena, are serving customers in Missouri. In fact, Birch recently announced that it is providing service to residential customers in Missouri via unbundled network elements. (See Attachment C to my Reply Affidavit).
60. The CLECs also claim that there is no residential competition in the state of Missouri. This also is untrue. As outlined in Mr. Tebeau's reply affidavit, CLECs are serving residential customers in Missouri via all three methods



contemplated by the Act, i.e., resale, the purchase of UNEs, and pure facilities based. In fact, CLECs have gained over 20% of the residential market in two Missouri exchanges. This fact demonstrates that CLECs can compete for residential customer when they choose to do so. The MPSC appropriately concluded “that facilities-based local competition exists in Missouri for both business and residential customers.” (See March 15, 2001 Order at 91).

61. Mr. Lieberman’s comments at page 9 of his affidavit regarding rebalancing are false. SWBT does not believe it has the regulatory authority to rebalance rates. SWBT currently has price cap status under the Missouri Statutes Section 392.245, RSMo. 2000 and its rates for exchange access and basic local service are constrained pursuant to the terms of the statute.
62. Under the statute, basic local rates are capped. Specifically under Section 392.245.4, the maximum allowable prices for exchange access and basic local telecommunications services of an incumbent local exchange telecommunications company shall be annually changed by one of the following methods:
  - (a) By the change in the telephone service component of the Consumer Price Index (CPI-TS), as published by the United States Department of Commerce or its successor agency for the preceding twelve months; or
  - (b) Upon request by the company and approval by the commission, by the change in the Gross Domestic Product Price Index (GDP-PI), as published by the United States Department of Commerce or its successor agency for the preceding twelve months, minus the productivity offset established for telecommunications service by the Federal Communication Commission and adjusted for exogenous factors;

Since SWBT is currently a price cap company, SWBT does not have the ability to rebalance rates as suggested by Mr. Lieberman.

## CONCLUSION

63. The rhetoric of the CLECs does not ring true when the facts in the Missouri proceeding are brought to light. The MPSC conducted a complete and thorough review of SWBT's 271 application. Its work included the review of the records from Texas, Kansas and Oklahoma, as well as the hiring of an independent consultant to assist in its efforts. The MPSC established permanent rates in Case No. TO-97-40 as TELRIC compliant, following an extensive four-month review by its Staff of the cost models and cost inputs proposed by the parties to that proceeding.
64. The MPSC's March 15, 2001 Order at page 91 also responds to the issues raised by the intervenors:

"Based on the extensive record in this case, the availability of the M2A to Missouri CLECs, and the Commission's intention to expeditiously determine permanent rates, terms, and conditions for collocation, line sharing, line splitting, loop conditioning, and unbundled network elements, the Commission concludes that facilities-based local competition exists in Missouri for both business and residential customers; that SWBT is providing competing carriers with all of the requisite checklist items in a nondiscriminatory fashion; and that SWBT's entry into the Missouri long-distance market is in the public interest. In addition, the Commission finds that the M2A complies with the requirements of 47 U.S.C. § 271(c). The Commission recommends that the FCC grant SWBT's Application for authorization to provide in-region, interLATA services in the state of Missouri."

65. The MPSC reaffirmed its recommendation when in its September 4, 2001 Order it stated:

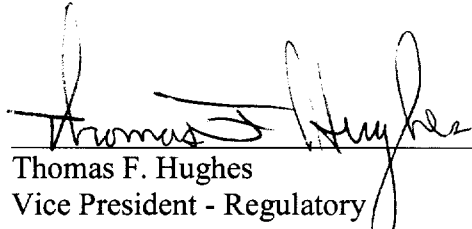
"The Commission recognizes the benefits that additional competition in interLATA telecommunications services will bring to the state of Missouri. Given the Commission's continued monitoring, the improved

performance of Southwestern Bell since the competitive companies have been operating under the M2As in Missouri, the fact that the Commission is working diligently to determine the appropriate long-term rates, subject to true-up, where those rates had not previously been set, and the fact that the M2A rates will now be lower than previously offered, the Commission finds no new information sufficient to reconsider its previous recommendation. The Commission continues to support Southwestern Bell's application for in-region interLATA authority." September 4, 2001 Order at 9.

This concludes my affidavit.

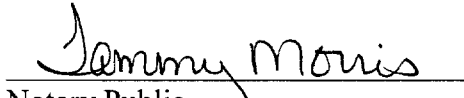
The information contained in this affidavit is true and correct to the best of my knowledge and belief.

Executed on 9/28, 2001.

  
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Thomas F. Hughes  
Vice President - Regulatory

STATE OF MISSOURI     )  
                                  ) ss  
COUNTY OF COLE     )

Subscribed and sworn to before me this 28<sup>th</sup> day of September, 2001.

  
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Notary Public

**TAMMY R MORRIS  
NOTARY PUBLIC STATE OF MISSOURI  
COLE COUNTY  
MY COMMISSION EXP. APR. 4, 2004**